

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

CIVIL CASE NO. 3:08cv373

IN RE:)
THOMAS BRUCE PARKER,)
)
Debtor/Appellant.)
_____)
)
Richard M. Mitchell,)
Chapter 7 Trustee,)
)
Plaintiff,)
)
vs.)
)
Theodore Gregg Parker,)
Thomas Bruce Parker, Betty)
Jean Parker, Margaret June)
Parker Schlaphohl,)
)
Defendants.)
_____)

ORDER

THIS MATTER is before the Court on the Notice of Appeal [Doc. 1], filed on August 18, 2008.

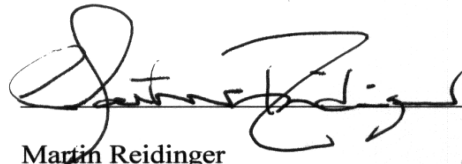
On July 8, 2008, United States Bankruptcy Judge J. Craig Whitley entered Findings of Fact, Conclusions of Law and Order in an adversary proceeding in the Appellant's bankruptcy proceeding. [Doc. 1-2, filed August 18, 2008]. On August 5, 2008, Appellant presented his Notice of

Appeal to the Bankruptcy Court which stamped it as filed although no record thereof is shown in the Bankruptcy Court docket. Appellant filed the Notice of Appeal in this Court on August 18, 2008.

Bankruptcy Rule 8002 provides that a notice of appeal must be filed with the clerk within ten days of “the date of the entry of the judgment, order or decree appealed from.” Because this appeal was filed more than ten days after entry of the order, this Court has no jurisdiction. Parker v. North Carolina Agr. Finance Authority, 341 B.R. 547, 554 (E.D.Va. 2006), *affirmed sub nom* Iles v. North Carolina Agr. Finance Authority, 249 Fed.Appx. 304 (4th Cir. 2007), *citing* Smith v. Dairymen, Inc., 790 F.2d 1107, 1109 (4th Cir. 1986); *accord*, In re Bayhi, 528 F.3d 393, 401 (5th Cir. 2008) (timely filing is a jurisdictional requirement); In re Novak, 115 Fed.Appx. 467 (2nd Cir. 2004), *certiorari denied sub nom* Novak v. Teitelbaum, Braverman & Borges, P.C., 546 U.S. 815, 126 S.Ct. 339, 163 L.Ed.2d 50 (2005). Since this Court sits as the appellate court in this matter, it must always address the issue of jurisdiction, even *sua sponte* if necessary. Chao v. Rivendell Woods, Inc., 415 F.3d 342, 345 (4th Cir. 2005); Snowden v. CheckPoint Check Cashing, 290 F.3d 631, 635 (4th Cir. 2002), *certiorari denied* 537 U.S. 1087, 123 S.Ct. 695, 154 L.Ed.2d 631 (2002). There being no jurisdiction, the appeal is dismissed.

IT IS, THEREFORE, ORDERED that the Court *sua sponte* dismisses
this appeal for lack of jurisdiction.

Signed: October 9, 2008


Martin Reidinger
United States District Judge

